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04-252

Supreme Court, U.S.
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No. ~~04-252~~

IN THE

Supreme Court of the United States

VERNON MILLS,
Petitioner
v.
LAW OFFICE OF MELBOURNE MILLS, JR., DAVID STUART, AND MICHAEL P. CASEY
Respondents

On Petition For a Writ of Certiorari To the Court of Appeals of Kentucky

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Come the Respondents, the Law Office of Melbourne Mills Jr., David Stuart, and Michael P. Casey, through counsel, and tenders the following in opposition to the Petition for Writ of Certiorari filed by Petitioner Vernon Mills.

ARGUMENT

Although Petitioner's exact legal argument asserting federal jurisdiction over this claim is unclear, to the best of Respondent's observation, the claim is that the dismissal of Petitioner's action under Rule 12.02 of the Kentucky Rules of Civil Procedure constitutes a violation of his 14th Amendment Rights to due process. In the petition, Petitioner sets forth almost the exact same argument that was presented to the Kentucky Court of Appeals: that as a result of the Respondents' alleged negligence in representing him on a personal injury claim, he suffered damages, and accordingly the dismissal of his malpractice action for failure to state a claim was wrong. However, for the first time, Petitioner now alleges that the decision violates his Constitutional right to due process under the 14th Amendment.

Petitioner's claim of a violation of due process is merely a continuance of an end-run around a decision rendered by the trial court that is unfavorable to him. Petitioner claims that given his set of circumstances, the decision to dismiss his case under Kentucky Civil Rule 12.02 violates his Constitutional rights.

Kentucky Rule 12.02(f) states that a party may move for dismissal for "failure to state a claim upon which relief may be

granted." The language in this provision mirrors that of the Federal Rules of Civil Procedure; specifically, Rule 12(b)(6).

This Court has previously stated that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). The same standard has been adopted in Kentucky. Weller v. McCauley, Ky., 383 S.W.2d 356 (1964); Jones v. City of Carlisle, Kentucky, 3 F.3d 945 (6th Cir. 1993).

The determination of the Fayette Circuit Court at the trial level was properly made according to the standard described above. The Kentucky Court of Appeals used the exact same standard in affirming the ruling of the Fayette Circuit Court, citing the Petitioner's failure to state any facts establishing a breach of duty by the Respondents which caused any damages to him. Petitioner appealed to the Kentucky Supreme Court, and his request for review was denied on April 15, 2004.

It should be noted that at no point during the state-court proceedings, did Petitioner allege that the decision of the trial court amounted to a violation of his right to due process. Therefore, his petition does not comply with Supreme Court Rule 14(g)(i), which requires that the petition articulate at what point during the proceedings the federal question was raised, and how the lower courts passed on them. Petitioner does not do this, of course, because the allegation of a due process violation was never raised

in the appeal to the Kentucky Court of Appeals, nor in the appeal to the Kentucky Supreme Court.

Petitioner is attempting to equate an unfavorable decision to him with a violation of his Constitutional rights. Although the trial court awarded the Petitioner damages, his claim of malpractice against his counsel stems from the fact that he feels that tactical decisions by his counsel resulted in a lower award than what Petitioner was anticipating.

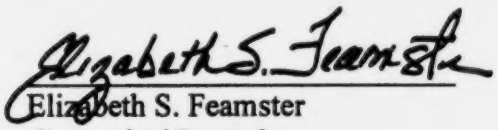
Supreme Court Rule 10 states, "A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." The majority of Petitioner's argument for a grant of certiorari by this court consists of rehashing the facts of his counsel's alleged negligence in representing him in his original personal injury action. Since the trial court correctly dismissed the malpractice action for failure to state a claim, Petitioner has consistently used each appeal to reargue the facts alleged in his underlying Complaint. Engaging in such a factual review is not the duty of this Court.

Furthermore, each Kentucky court, in rendering or affirming the dismissal for failure to state a claim, used the proper legal standard previously articulated in both. It is clear that the petitioner has not suffered any loss of his due process rights, since the dismissal by the trial court was made pursuant to the proper Constitutional standard as affirmed by this Court in Conley.

CONCLUSION

For the aforementioned reasons, Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



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